

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION**

SCOTT HUTCHISON
ENTERPRISES, INC., et al.,

Plaintiffs,

v.

C-1- 01-776

RHODES, INC., et al.,

Defendants.

ORDER

This matter is before the Court upon defendant H.T. Boggs's motion to strike plaintiffs' motion for partial summary judgment against Boggs and memorandum in support (doc. 112), which plaintiff opposes (doc. 113). Defendant Boggs argues that plaintiffs' motion for partial summary judgment (doc. 110) is untimely and does not comply with the schedule that the parties jointly proposed to the Court on November 13, 2003 (doc. 70). Defendant Boggs moves the Court to extend the time within which he may respond to plaintiffs' motion to 21 days following the Court's decision on Boggs's motion to strike in the event the Court denies the motion.

The chronology of pertinent events in this case is as follows: On July 23, 2003, the Court issued an Amended Scheduling Order that established a deadline of April 26, 2004, for the filing of all dispositive pre-trial motions (doc. 44). On November 13, 2003, the parties submitted a joint status report and a proposed second amended Scheduling Order, which included a deadline

of July 1, 2004, for the filing of all dispositive pre-trial motions addressing issues of liability not requiring expert testimony (doc. 70). The Court subsequently vacated the Amended Scheduling Order on November 20, 2003 (doc. 73). In its November 20, 2003 Order, the Court did not adopt the proposed Scheduling Order attached to the joint status report but directed the parties to submit a new proposed Scheduling Order within sixty days after service of process on new parties that had been added to the lawsuit. The Court also set a status/scheduling conference for April 30, 2004. The conference was subsequently cancelled, and the Court directed the parties to submit a proposed Scheduling Order within ten days of disposition of the pending motions for summary judgment (doc. 97). The motions for summary judgment that were pending as of the date of that Order had not been addressed before plaintiffs filed their motion for summary judgment against defendant Boggs, and those earlier-filed motions remain pending.

Based on this chronology, the Court finds that plaintiffs' motion for partial summary judgment against Boggs is not untimely. There was no established deadline for the filing of summary judgment motions at the time plaintiffs filed their motion for partial summary judgment against Boggs, and Boggs has not shown that he will be prejudiced if he is required to respond to the motion. Accordingly, the Court declines to strike the motion. The Court finds, however, that the parties have had ample opportunity to file their dispositive pre-trial motions. The time for filing dispositive pre-trial motions is now closed.

For these reasons, defendant Boggs's motion to strike plaintiffs' motion for partial summary judgment and supporting memorandum is **DENIED**. Defendant Boggs is granted **21 days** from the date of this Order to file his response to plaintiffs' motion. Plaintiffs may file a reply within the time allotted under the governing rules. The parties shall not file any additional dispositive pre-trial motions in this case without prior authorization of the Court upon a showing a good cause and a manifest necessity for the filing of such motion.

IT IS SO ORDERED.

S/ Herman J. Weber

HERMAN J. WEBER
SENIOR JUDGE, UNITED STATES DISTRICT COURT

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